

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 6, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 19, 2/27/2003; SB 10, 2/27/2003;
SB 3, 2/27/2003; SB 25, 2/27/2003
Executive Action: SB 10; SB 3; SB 19; SB 25

HEARING ON SB 19

Sponsor: REP. DWAYNE GRIMES, SD 20, Cascade

Opening Statement by Sponsor:

REP. GRIMES opened on SB 19 stating that this bill revises the laws regarding State assumption of district court costs and warrant payment procedures. It also revises appointment authority for court reporters, juvenile probation and youth assessment officers, and clarifies workers compensation and independent court reporter requirements.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 21}

Proponents' Testimony:

Chief Justice Karla Gray, Helena, supported SB 19. She explained that the district court council requested that SENATOR GRIMES carry this bill. The council has five voting members including Justice Gray and four other district court judges from Havre, Great Falls, Missoula, and Billings.

{Tape: 1; Side: A; Approx. Time Counter: 22 - 100}

Harold Blatty, Montana Association of Counties, supported SB 19. He stated that he supported this bill in the Senate as well. He explained that a Senate subcommittee is looking at district court issues such as paying juror and witness fees. He stated that these would be paid directly by the State rather than the counties.

{Tape: 1; Side: A; Approx. Time Counter: 101 - 112}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. GRIMES closed on SB 19.

{Tape: 1; Side: A; Approx. Time Counter: 114 - 118}

HEARING ON SB 10

Sponsor: SENATOR DWAYNE GRIMES, SD 20, Cascade

Opening Statement by Sponsor:

SENATOR GRIMES opened on SB 10, stating this bill could be referred to as "the Code Commissioner bill." It would clarify and revise the MCA to allow the code commissioner to correct erroneous references without having to go before the Legislature.

{Tape: 1; Side: A; Approx. Time Counter: 118 - 142}

Proponents' Testimony:

Greg Petesch, Code Commissioner, Helena, supported SB 10. He explained that this bill has 138 sections: 44 correct terms, 34 correct erroneous subsections, 14 conform statutes to the past two sessions, 26 update references to the Internal Revenue Code, two refer to correct citation forms and one, Section 138, gives authority to the code commissioner to correct erroneous code references without needing legislative action.

{Tape: 1; Side: A; Approx. Time Counter: 143 - 207}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG asked Mr. Petesch why the symbol was not used in the Code instead of the term "section." Mr. Petesch responded that some people do not have the technological capacity to make the symbol so they elected to use the term "section."

{Tape: 1; Side: A; Approx. Time Counter: 208 - 228}

Closing by Sponsor:

SENATOR GRIMES closed on SB 10.

{Tape: 1; Side: A; Approx. Time Counter: 232 - 238}

HEARING ON SB 3

Sponsor: SENATOR DAN HARRINGTON, SD 19, Butte

Opening Statement by Sponsor:

SENATOR HARRINGTON opened on SB 3. He explained that it eliminates the requirement that the clerks of the district courts and the Supreme Court compile and make available certain criminal sentencing information.

{Tape: 1; Side: A; Approx. Time Counter: 229 - 285}

Proponents' Testimony:

Ed Smith, Clerk of Montana Supreme Court, supported SB 3. He explained that this bill is carried at the request of the Law and Justice Interim Committee as well as himself. He stressed that this statute was never totally complied with when it was enacted; it was not developed with the court system's input. The other half of the problem came when the State Judicial Information System was shut down by the former Supreme Court administrator in 1991 due to budget cuts.

EXHIBIT (juh47a01)

{Tape: 1; Side: A; Approx. Time Counter: 286 - 305}

Mary Phippen, Montana Association of Clerks of District Court (Association), supported SB 3. She stated members of the Association have reviewed this statute and agree with the Law and Justice Interim Committee.

{Tape: 1; Side: A; Approx. Time Counter: 306 - 316}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. GUTSCHE asked what is being repealed. **Mr. Smith** responded that the Section 46-18-604 Transmittal of Sentencing Data to the Supreme Court would be repealed. **REP. CLARK** asked what will get transmitted to the Supreme Court which is not currently getting transmitted. **Mr. Smith** stated that the Supreme Court does not have a data base so the information is not transmitted to the Supreme Court. The data base for sentencing information was shut down in 1991 due to a lack of funds. **REP. NEWMAN** asked if anyone had a "green sheet" which would show what information is sent to the Department of Justice (DOJ). **Mr. Smith** responded that he

would get one to the Committee. **REP. NEWMAN** explained that the green sheets go to the DOJ and have the initial charge, signed by the county attorney, and the final disposition, signed by the clerk of court.

{Tape: 1; Side: A; Approx. Time Counter: 317 - 457}

REP. NOENNIG asked Ms. Phippen about requested information under 46-18-604. She stated that most of the information is included on the green forms which go to the DOJ. She felt one problem is that the percentages and statistics are not reported.

{Tape: 1; Side: A; Approx. Time Counter: 459 - 511}

REP. NEWMAN stated that judges are required by law to explain their reasons for a particular sentence. He stressed that this does not lend itself to a statistical report for 56 counties due to the differences in reasons for a sentence.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 20}

Closing by Sponsor:

SENATOR HARRINGTON closed on SB 3.

HEARING ON SB 25

Sponsor: **SENATOR JEFF MANGAN, SD 23, Black Eagle, Great Falls**

{Tape: 1; Side: B; Approx. Time Counter: 21 - 35}

Opening Statement by Sponsor:

SENATOR MANGAN opened on SB 25. He stated the basic issue is whether we want to send youths with serious mental health issues to secure correctional facilities. He stated that funding and other issues come into play; things which they do not have control over. For example, there is not a juvenile wing at Warm Spring. He explained that four to five youths a year would fall under this statute. He felt we should treat kids with serious mental health issues with the same consideration as we treat adults.

{Tape: 1; Side: B; Approx. Time Counter: 36 - 148}

Proponents' Testimony:

Steve Gibson, Juvenile Administration, Department of Corrections, Helena, supported SB 25. He stated there is a conflict in the current statute. On one hand it states that youths with serious mental health issues may not be sent to a youth correctional facility. On the other hand, it states what needs to be done if they are sent. He stated that kids are often eligible for medicaid dollars prior to being sent to Pine Hills but once in the facility, they may not be eligible for medicaid dollars. He stated that general fund money is used to pay for kids who become diagnosed with a serious mental illness while in the facility.

{Tape: 1; Side: B; Approx. Time Counter: 149 - 231}

Anita Roessman, Attorney, Montana Advocacy Program, supported SB 25. She explained that at first she was an opponent, but decided she would be a supporter of the bill if the definition of serious emotional disturbance was changed. She explained that she drafted a definition of serious emotional disturbance from the definition used to determine whether a child qualifies for medicaid funded services. She really likes this definition because it contains lists of diagnosis more appropriate to children. She felt the amended definition she proposed would educate people about diagnosis that apply to children. She felt this new definition would encourage consistent adjudication, better placement of children, and reduce the battles between experts. She urged the Committee to amend the current definition.

EXHIBIT (juh47a02)

{Tape: 1; Side: B; Approx. Time Counter: 232 - 339}

Bill Slaughter, Director of Department of Corrections (DOC), Helena, supported SB 25. He stated that the current statute puts the judge in a precarious position. He felt that we need to look at more appropriate placements for those three to four kids a year who would be affected by this statute.

{Tape: 1; Side: B; Approx. Time Counter: 340 - 383}

Bonnie Adee, Mental Health Professional, Helena, supported SB 25. She stated that this bill would look at which route, correction or treatment, would work best. She stated this bill and the amendment regarding the definition would be better than current law because it would specifically address youths.

{Tape: 1; Side: B; Approx. Time Counter: 384 - 442}

Donald Harr, Physician/Psychiatrist, Montana Psychiatric Association, Billings, supported SB 25. He stated that he approves of the concept that those few youths who are seriously mentally disturbed should be in a more appropriate setting.

Chris Christaens, Montana Chapter of the National Association of Social Workers, supported SB 25. He stated that he speaks on behalf of 500 licensed social workers. They support the bill but would like it amended to state "seriously emotionally disturbed."

{Tape: 1; Side: B; Approx. Time Counter: 443 - 512}

Janie McCullough, Montana Children's Services, supported SB 25. She stated that they provide a lot of services to youths within the justice system. They are concerned about the current definition serious mental or emotional disturbance and support amending it.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 9}

Betty Whiting, Montana Association of Churches, Helena, supported SB 25. She stated that this bill would help protect kids and ensure they get the right treatment.

Kimberly Gardner, Montana Wilderness Treatment Program, supported SB 25. She asked the Committee to adopt the SED definition. She emphasized that it is taken from the DSMIV manual which is used by all mental health professionals including psychologists, psychiatrists, and medicaid funded treatment facilities.

{Tape: 2; Side: A; Approx. Time Counter: 10 - 34}

Mel Davis, Montana Mental Health Association, supported SB 25. He stated that three out-of four youths in the juvenile system have some sort of mental illness. This bill will save kids and money.

{Tape: 2; Side: A; Approx. Time Counter: 35 - 85}

Opponents' Testimony:

Glen Welch, Montana Juvenile Probation Association, opposed SB 25. He stated that this bill fails to address the problem and that cost shifting is not a solution. He stated that if a youth was convicted of rape, a judge would not be able to place the youth at Pine Hills if the youth suffered from a serious

depression. The court would have to place the youth out-of-state which would cost the system a lot of money.

EXHIBIT (juh47a03)

{Tape: 2; Side: A; Approx. Time Counter: 86 - 121}

Judge John Larson, Fourth Judicial District, Missoula and Mineral Counties, opposed SB 25. He stated he has been a judge for 10 years. He serves on the oldest judicial organization, the National Council of Juvenile and Family Court Judges. He stated that judges who sit on youth courts are concerned with youths who have mental health issues. He explained that they deal with these kids after the juvenile probation office has worked with them for awhile. He felt that the DSMIV manual is not appropriate as it uses an adult model which would cover every kid with conduct disorders. He stated that this bill does not help the juvenile system and that it will cause more, not less, battling of the experts. He wants a juvenile system that works. He stated in the final analysis, we need to protect communities which this bill would not do. He stressed that although the current statute is inadequate, this bill is definitely not the answer.

EXHIBIT (juh47a04)

{Tape: 2; Side: A; Approx. Time Counter: 122 - 214}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. CLARK asked about the public outcry to protect society. **Director Slaughter** responded that DOC has mechanisms which work well with angry kids and kids who have little family support. But when kids have serious mental disorders, it is a big problem for judges. Judges do have to protect communities.

REP. FACEY asked if the point of diversion is before or after sentencing to Pine Hills. **Steve Gibson** responded that it is prior to sentencing if diagnosed with a serious mental illness. **Judge Larson** responded that the youth can be diverted before a petition is filed. When a youth gets in an adversarial situation, treatment options become more limited. **Judge Larson** commented that the DOJ and the Intervention Project have worked well together on youth mental health issues in the past. He emphasized again that we do not need this bill.

REP. GUTSCHE asked about Judge Larson's comments: that although the system is not perfect, there is a mechanism in place; it is working, and we should leave it alone by not passing this bill.

SENATOR MANGAN responded that he did not know the DOC could access the contingency funds which he thought were solely for juvenile probation. He stated that last year, the DOC had to take from another part of their budget to cover juvenile parole placement. There was approximately \$600,000 left from last year and over \$700,000 left in the contingency fund.

Judge Larson commented that the process needs refining; that a "cookie cutter mentality" does not help. He stated that the district courts are the default providers for kids; that although the system needs more work, the amended definition is problematic and would create more problems. He asked the Committee to not leave the barndoor open stressing that if the bill passed, troubled youths may end up in limbo; at neither a treatment center or a youth correctional facility. He stressed whether Montana could even afford sending a youth to an out-of-state treatment facility at a cost of \$500 a day.

{Tape: 2; Side: A; Approx. Time Counter: 215 - 512}

{Tape: 2; Side: B; Approx. Time Counter: 1 - 277}

Closing by Sponsor:

SENATOR MANGAN closed on SB 25. He stated the focus should be on the current definition. He stressed he has no problem with the SED definition. He felt that everyone's hearts are in the right place but that the system is not working for the three or four kids who should not be sent to Pine Hills due to serious mental or emotional disturbances.

{Tape: 2; Side: B; Approx. Time Counter: 278 - 349}

EXECUTIVE ACTION ON SB 10

Motion/Vote: **REP. GALLUS** moved that **SB 10 BE CONCURRED IN.**

Motion carried 18-0, by voice vote. (REPS. SHOCKLEY and LASZLOFFY voted by proxy.) Carried by CHAIRMAN SHOCKLEY.

EXECUTIVE ACTION ON SB 3

Motion/Vote: REP. GALLUS moved that SB 3 BE CONCURRED IN. Motion carried 18-0, by voice vote. Carried by REP. NEWMAN.

EXECUTIVE ACTION ON SB 19

Motion/Vote: REP. GUTSCHE moved that SB 19 BE CONCURRED IN. Motion carried 18-0, by voice vote. Carried by CHAIRMAN SHOCKLEY.

Motion/Vote: REP. FACEY moved SB 3 and SB 19 BE PLACED ON THE CONSENT CALENDAR. No Objections, Motion Carried.

EXECUTIVE ACTION ON SB 25

Motion: REP. FACEY moved that SB 25 BE CONCURRED IN.

Discussion:

The Committee discussed whether the funds were available. The Committee also discussed the fact that the bill gives the DOC authority to decide rather than the court on the issue regarding whether commitment is proper. REP. NEWMAN felt the bill is a fix to a problem which does not exist. REP. GALLUS stated this bill will not solve the problem and will only tip the scales the other direction.

Motion/Vote: REP. GALLUS moved that SB 25 BE TABLED. Motion carried 14-4, by roll call vote, with REPS. GUTSCHE, HARRIS, LANGE, and RASER voting no.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 74}

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh47aad)